

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District
Name (under which you were convicted): Dewey Odell Hopper, Jr.	Docket or Case No: 05F6-CR00343-01 05F6-CR00343-02
Place of Confinement : South Central Correction Center 255 W. Hwy 32, Licking, MO	Prisoner No.: 47884
Petitioner (include the name under which you were convicted) Dewey Odell Hopper, Jr.	V. Respondent (Authorized person having custody of Petitioner) Michele Buckner, Superintendent
The Attorney General of the State of : Eric Schmitt, Attorney General of Missouri	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
Circuit Court of Dunklin County

(b) Criminal docket or case number (if you know): 05F6-CR00343-01 / 05F6-CR00343-02

2. (a) Date of the judgment of conviction (if you know): Dec. 4, 2008 / November 23, 2010

(b) Date of sentencing: February 5, 2009 / December 22, 2010

3. Length of sentence: Original Sentence: 30 Years Concurrent / Second Sentence: 50 years Consec

4. In this case, were you convicted on more than one count or of more than one crime? Yes__ No ☒ X

5. Identify all crimes of which you were convicted and sentenced in this case:
One Count Unclassified Felony RSMo. 566.030, Forcible Rape

6. (a) What was your plea? (Check one)

(1) Not guilty X

(3) Nolo Contendere (no contest) _____

(2) Guilty _____

(4) Insanity plea _____

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (check one)

Jury X

Judge only _____

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes X

No _____

8. Did you appeal from the judgment of conviction?

Yes X

No _____

9. If you did appeal, answer the following:

(a) Name of court: Missouri Court of Appeals, Southern District

(b) Docket or case number (if you know): First Trial Appeal Reversed / Second Trial: SD31055

(c) Result: Affirmed Conviction of Second Trial

(d) Date of result (if you know): December 7, 2011 Mandate Issued

(e) Citation to the case (if you know): _____

(f) Grounds raised: Trial Court erred on excluding evidence of a prior false allegation by the victim and allowing prior testimony of the victim's sister who was unavailable for trial.

(g) Did you seek further review by a higher state court?

Yes X

No _____

If "Yes," answer the following:

(1) Name of court: United States District Court Eastern district of Missouri

(2) Docket or case number (if you know): 4:17-CV-2601 SRW

(3) Result: Appeals denied

(4) Date of result (if you know): September 21, 2020

(5) Citation of the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ____ No X

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petition, application or motions concerning this judgement of conviction in any state court?

Yes X

No ____

11. If your answer to Question 10 was "YES," give the following information:

(a) (1) Name of court: Texas County Cicuit Court

(2) Docket or case number (if you know): 19TE-CC00441

(3) Date of filing (if you know): March 6, 2020

(4) Nature of the proceeding: Writ of Habeas Corpus

(5) Grounds raised: Violation of Due Process under 14th Amendment of the U.S.

Constitution. Petitioner was sentenced to an increase of 20 years imprisonment
run consecutively as punishment for successfully appealing his first
conviction. prosecutorial vindictiveness.

North Carolina v. Pearce (1969)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?
Yes X No ____

(7) Result: Petitioner was denied right to present evidence at hearing or argue
false claims by Respondent Attorney General

(8) Date of result (if you know): Hearing held March 6, 2020

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Court of Appeals State of Missouri Southern District

(2) Docket of case number (if you know): SD36718

(3) Date of filing (if you know): July 24, 2020

(4) Nature of the proceeding: Appeal

(5) Grounds raised: same as above; additionally, entitled to an evidentiary hearing, lost his right to present evidence at hearing scheduled, Attorney Generals statements misleading and false used at hearing without a chance to respond, petitioner lost his right to effective assistance of counsel

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?
Yes No X

(7) Result: Appeal denied

(8) Date of Result (if you know):

(c) If you file any third petition, application, or motion, give the same information:

(1) Name of court: Missouri Supreme Court

(2) Docket of case number (if you know): SC98747

(3) Date of filing (if you know): September 28, 2020

(4) Nature of the proceeding: Appeal

(5) Grounds raised: same as above

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No X

(7) Result: Appeal denied

(8) Date of result (if you know): December 22, 2020

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:	Yes <u>X</u>	No <u> </u>
(2) Second petition	Yes <u>X</u>	No <u> </u>
(3) Third petition	Yes <u>X</u>	No <u> </u>

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: _____

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Trial Court erred by ordering Petitioner to serve a sentence in his second trial to an increase of 20 years imprisonment and run consecutively because the increases were presumptively the result of vindictiveness

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
There is clearly no objective reason stated on the record to explain the increase. In the first trial the prosecutor makes no argument to the 30 year sentence; and in the second trial provides a change in recommendation to 50 years based on misleading information, in that the sentencing falls under RSMo. 557.021 guidelines and is classified as a Class A felony for sentencing. There is no evidence presented or on record to show that Petitioner had any conduct between trials to warrant an increase. In fact, the opposite has been shown on transcripts.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes _____

No X

(2) If you did not raise this issue in your direct appeal, explain why? _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes X No _____

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Habeas Corpus

Name and location of the court where the motion or petition was filed: _____
(see section 11) Texas County Circuit Court

Docket or case number (if you know): 19TE-CC00441

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Habeas Corpus denied

(3) Did you receive a hearing on your motion or petition?

Yes X No _____

(4) Did you appeal from the denial of your motion or petition?

Yes X No _____

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes X No _____

(6) If your answer to Question (d)(4) is "Yes," state

Name and location of the court where the appeal was filed: Court of Appeals
State of Missouri Southern District

Docket or case number (if you know): SD36718

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order if available) Appeal denied

(7) If your answer to Question (d)(4) or Questions (d)(5) is "No", explain why you did not raise this issue: _____

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc) that you have used to exhaust your state remedies on Ground One: Missouri Supreme Court Appeal

GROUND TWO: Petitioner is entitled to relief and or an evidentiary hearing, and to present at such on his claim that a violation of prosecutorial vindictiveness occurred.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
Petitioner was granted a hearing on March 6, 2020. Petitioner was not granted opportunity to argue or respond to Attorney General's false claims presented to the Court, as such "that the Petitioner had conduct that required a change of Judge, and that his conduct between trials was detrimental to the judicial process..." is false and misleading. The change in Judge occurred before his first trial where there was animosity between the Peitioner and first Judge. not between trials. Evidence of this is available on the record.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ____ No X

(2) If you did not raise this issue in your direct appeal, explain why? this violation occurred upon the Habeas Corpus petition in Texas County, not the Direct Appeal

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes X No ____

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Appeal

Name and location of the court where the motion or petition was filed: Court of Appeals State of Missouri Southern District

Docket or case number (if you know): SD36718

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): Appeal denied

(3) Did you receive a hearing on your motion or petition?

Yes ____ No X

(4) Did you appeal from the denial of your motion or petition?

Yes X No ____

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes X No ____

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Missouri Supreme Court

Docket or case number (if you know): SC98747

Date of the court's decision: December 22, 2020

Results (attach a copy of the court's opinion or order if available) Appeal denied

(7) If your answer to Question (d)(4) or Questions (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc) that you have used to exhaust your state remedies on Ground Two: Missouri Supreme Court

GROUND THREE: Petitioner Lost his Right to Effective Assistance of Post-Conviction Counsel. Public Defender Ellen Flottman refused to bring the claim of Prosecutorial Vindictiveness at Petitioner's demand and request.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):
Petitioner wrote a letter to Post conviction Counsel, Public Defender Ellen Flottman requesting that she file a claim against prosecutorial vindictiveness including all relevent facts and reasons why Petitioner believed he was retaliated against. Counsel Flottman wrote back on May 25, 2011 stating she would look into vindictiveness. She did not file tha claim, nor follow up on why she did not.

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes _____ No X

(2) If you did not raise this issue in your direct appeal, explain why? Post Conviction Counsel did not file as requested by Petitioner.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?
Yes X No _____

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Habeas Corpus

Name and location of the court where the motion or petition was filed: _____
(see section 11) Texas County Circuit Court

Docket or case number (if you know): 19TE-CC00441

Date of the court's decision: _____

Remark (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes X No _____

(4) Did you appeal from the denial of your motion or petition?

Yes X No _____

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes X No _____

(6) If your answer to Question (d)(4) is "Yes," state

Name and location of the court where the appeal was filed: Court of Appeal
State of Missouri Southern District

Docket or case number (if you know): SD36718

Date of the court's decision: Appeal denied

Results (attach a copy of the court's opinion or order if available) _____

(7) If your answer to Question (d)(4) or Questions (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc) that you have used to exhaust your state remedies on Ground Three: Missouri Supreme Court

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes _____ No _____

(2) If you did not raise this issue in your direct appeal, explain why? _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes _____ No _____

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach of copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes _____ No _____

(4) Did you appeal from the denial of your motion or petition?

Yes _____ No _____

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes _____ No _____

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order if available) _____

(7) If your answer to Question (d)(4) or Questions (d)(5) is "No", explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes X No *

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: * a 5 page appeal required by the Missouri Supreme Court severely limited Petitioner's arguments and case law to argue all grounds effectively, and had to focus primarily on the vindictiveness argument.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NO

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes X No ___

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available: United States District Court Eastern District of Missouri, Eastern Division Case no. 4:17-CV-2601 SRW

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal for the judgment you are challenging? Yes ___ No X

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: _____

(a) At preliminary hearing: Public Defender Chris Wyans

(b) At arraignment and plea: same

(c) At trial: Public Defender Brandon M Sanchez

(d) At sentencing: same

(e) On appeal: Public Defender Ellen Flottman

(f) In any post-conviction proceeding: Public Defender Andrew Zleit

(g) On appeal from any ruling against you in a post-conviction proceeding: same

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(c) Give the length of the other sentence: _____

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition. *(see below)

Petitioner has timely filed all appeals as required by the rules and
procedures of the Missouri Court rules

(1) A one-year period limitations shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitations period shall run from the latest of:

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- expiration of the time for seeking such review;
(B) the date on which the impediment to filing an application created by State action in violation of the constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
(C) the date on which the constitution right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of true diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitations under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Evidentiary Hearing, Expansion of the Record allowing new evidence, Petitioner's Sentence reversed and remanded for new trial, and or Petitioner's sentence reversed and resentencing awarded or any other relief to which petitioner is entitled.

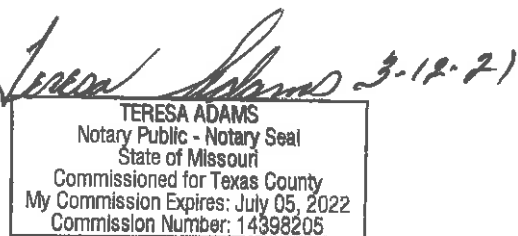
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 3-12-21 (month, date, year).

Executed (signed) on 3-12-21 (Date).

Dorey Haysen 47884
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____



South Central Correctional Center
255 W Hwy 32
Jacking Mo. 65542

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